IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 835 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

RAJIBEN PRABATBHAI

Appearance:

MR MUKESH PATEL ASST. GOVERNMENT PLEADER for Petitioner

NONE APPEARS FOR RESPONDENT

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 03/03/97

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. No one appears for the respondent.

2. This petition is filed to challenge the award made by Labour Court, Junagadh in Reference LCJ No.818 of 1990 (Old LCR No. 163 of 1987).

3. By the order dated 20.10.1986, a reference was

made to the Labour Court regarding dispute about the termination of service of respondent Smt. Rajiben Parbatbhai which was alleged to have taken place on 16.5.1985. The dispute referred was whether Smt. Rajiben is entitled to be reinstated with backwages.

4. According to the claim of the respondent, she was employed at Una Irrigation Project on dailywages at the rate of Rs.13.90ps per day. She was in service for seven years before termination of her services on and from 16.5.1985. Before terminating the services, no notice or pay in lieu of such notice and retrenchment compensation had been offered or paid in terms of Section 25F of the Industrial Disputes Act, 1947. It was case of the respondent that termination being in violation of the provisions of the Industrial Disputes Act, the retrenchment was void ab initio. By its award dated 25.7.1993, the Labour Court found in favour of the respondent by holding that retrenchment of the respondent was in violation of the provisions of Section 25F and therefore void. Accordingly, it directed reinstatement with full backwages. Cost of Rs.300/- was also awarded.

5. It has been urged by learned Asst. Government Pleader, that the reading of the award on the face of it do disclose that conditions requisite for applicability of Section 25F do not exist in the present case and therefore the termination simpliciter or more aptly put non-taking of the work from the respondent who was a dailywager in the absence of work does not amount to retrenchment much less an invalid termination. It was urged that at any rate conditions for applicability of Section 25F having not been established the alleged retrenchment cannot be held to be invalid on the ground of it being in violation of Section 25F.

6. Having carefully gone through the award, I am of the opinion that the contention of learned Asst. Government Pleader merits acceptance.

7. Section 25F which lays down the conditions precedent to retrenchment of a workman envisages in the first instance that the workman to whom the provisions apply must have been employed in continuous service for not less than one year under the employer. It is on the fulfillment of this condition the other conditions, namely, one month's notice in writing indicating the reasons for retrenchment or payment of wages for the period of notice in lieu of such notice, to be accompanied with payment of retrenchment compensation as envisaged under Section 25F(b) at the time of

retrenchment are required to be fulfilled before a workman to whom Section 25F applies, is subject to retrenchment.

8. What is meant by continuous service for the purposes of Chapter VA has been defined under Section 25B of the Act. The requisites for treating a person to be in continuous service for the requisite period, in the case of Section 25F one year, is that either he should be in uninterrupted service including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lay out or cessation of work which is not due to any fault on the part of the workman; or if he is not in continuous uninterrupted service within the meaning of clause (1) of Section 25B, he is deemed to be in continuous service under an employer for a period of one year if during a period of 12 calendar months preceding the date with reference to which calculation has to be made has actually worked under the employer for not less than 240 days. Explanation to subsection (2) extends the meaning of days on which a workman deemed to have actually worked by including therein the days on which he has been laid off under an agreement or is permitted by standing orders or under any other relevant provision applicable to the industrial establishment, the dates on which he has been on leave with full wages earned in the previous year. It also includes absence due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of female workman the absence due to maternity leave have also been counted to be days of actual working, to the extent the same does not exceed 12 weeks. The two necessary concomitants of the applicability of Section 25B(2) is that period of calendar months during which the workman must have worked for 240 days is to be counted backward from the date of alleged retrenchment. As in the present case the date of retrenchment is 16.5.1985, the 12 calendar months during which the petitioner must have worked for 240 days goes back to 16.5.84 to 15.5.1985. If counting the days on which the petitioner has actually worked or on which a workman is deemed to have actually worked results in working by such employee for 240 days or more, then, he can be treated to be a workman in continuous employment for a period of one year or more. It can also not be doubted that at any point of his service a workman completes a continuous service within the meaning of Section 25B(1) or (2), the benefit enures for subsequent period affecting retrenchment. However, these facts must be reflected clearly with reference to the date of retrenchment and with reference to any block of twelve

calendar months with reference to which continuous service of a workman is to be counted. If the claimant is not able to establish or from the record it is not established either of the conditions, namely, a workman being in uninterrupted service for one year in terms of section (1) or if he is not in uninterrupted service of one year within the meaning of subsection (1), he has actually worked for 240 days during 12 calendar months in question in terms of subsection (2), he cannot get the protection against retrenchment on the ground of alleged violation of conditions under Section 25F of the Act.

9. Keeping in view the aforesaid definition of the continuous service, if one looks at the finding reached by the Tribunal one finds the Tribunal has reached the conclusion that the services of workman has been terminated on 16.5.1985 and that she has worked for 1342 days in all. The Tribunal also has found that the claimant's name find in the seniority list published by the Irrigation Department. However, in the award it has not been found at all that the claimant was in uninterrupted service of one year immediately before retrenchment. Though it finds that the claimant has worked for 1342 days, which is more than 240 days of working, it nowhere gives a clue whether during the 12 calendar months preceding the date of retrenchment, namely, 16.5.1985, the claimant has actually worked for 240 days. Nor it was the case of the claimant, or a finding to the effect that, at any time anterior to retrenchment in question, absence from duty was due to alleged retrenchment because of not employing the claimant, though on such date of non employment the claimant fulfilled the condition of protection against retrenchment in terms of Section 25F and such non working is liable to be ignored. In the absence of any finding in terms of Section 25B(2) about the claimant having actually worked for 240 days in 12 months immediately preceding the date of retrenchment or having worked uninterruptedly for a period of one year or more in terms of Section 25B(1), it cannot be said merely on the basis of the compendium of work of 1342 days in seven years that the claimant is a workman who has been in continuous employment of one year or more in terms of Section 25B and consequently is entitled to the benefits of Section 25F.

10. As the findings in award lacks on the foundational premise for invoking Section 25F in case of the claimant, I need not examine the merits of the other contentions. The petition succeeds. The award dated 25.7.1993 is set aside.

11. It is observed from the record that while issuing Rule, the operation, execution and implementation of the award was stayed by order dated 20.1.1994 until 10.2.1994. However, it further appears that this interim relief was not extended thereafter. In these circumstances, if in terms of the award, petitioner has been reinstated and he has been paid wages during the period of his continuance in the service, the same shall remain unaffected. Nor the services of claimant need be dispensed with only on the ground that this petition has succeeded, if there is no other reason to dispense with his services. This is so because even in case of valid retrenchment of a workman who is not entitled to protection of Section 25F, because of nonfulfilment of criterion of continuous service for one year, he is still entitled to benefits under Section 25H, in the matter of offering fresh employment. Further if continuance in service after reinstatement enures in any benefit under the Industrial Disputes Act by application of any of its provisions including protection granted under Section 25F, the same shall also remain unaffected by reason of this order.

Rule is made absolute accordingly with no order as to costs.